

6. TIERED RATE METHODOLOGY

- 6.1 BPA has proposed a Tiered Rate Methodology (TRM) to FERC for confirmation and approval for a period up to 20 years (through September 30, 2028). The then-effective TRM shall apply in accordance with its terms and shall govern BPA's establishment, review and revision pursuant to section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e(i), of all rates for power sold under this Agreement.
- 6.2 In the event that FERC approves the TRM for a period less than through September 30, 2028, BPA shall, before the approved period of the TRM expires: (1) propose continuation of the TRM in a hearing conducted pursuant to section 7(i) of the Northwest Power Act or its successor; and then (2) resubmit the TRM to FERC for approval through September 30, 2028.
- 6.3 The recitation of language from the TRM in this Agreement is not intended to incorporate such language into this Agreement. The TRM's language may be revised, but only in accordance with the requirements of TRM sections 12 and 13. If language of the TRM is revised, any such language recited in this Agreement shall be modified accordingly, and the Amendment process of section 25.1 herein shall not apply to any such modifications.
- 6.4 Any disputes over the meaning of the TRM or rates or whether the Administrator is correctly implementing the TRM or rates, including but not limited to matters of whether the Administrator is correctly interpreting, applying, and otherwise adhering or conforming to the TRM or rate, shall (1) be resolved pursuant to the applicable procedures set forth in the TRM; (2) if resolved by the Administrator as part of a proceeding under section 7(i) of the Northwest Power Act, be reviewable as part of the Ninth Circuit Court of Appeal's review under section 9(e)(5) of the Northwest Power Act of the rates or rate matters determined in such section 7(i) proceeding; and (3) if resolved by the Administrator outside such a section 7(i) proceeding, be reviewable as a final action by the Ninth Circuit Court of Appeals under section 9(e)(5) of the Northwest Power Act. The remedies available to a customer through such judicial review shall be the customer's sole and exclusive remedy for such disputes, except as provided in the next paragraph.

Any knowing failure of BPA to abide by, or any BPA repudiation of, its obligation here and under the TRM to revise the TRM only in accordance with the TRM section 12 and 13 procedures for revision would be a matter of contract to be resolved as would any other claim of breach of contract under this Agreement. For purposes of this paragraph, when there is a dispute between BPA and the customer concerning what the TRM means or requires, a "knowing failure" shall occur only in the event the Ninth Circuit Court of Appeals rules against BPA on its position as to what the TRM means or requires and BPA thereafter persists in its prior position.

- 6.5 BPA shall not publish a Federal Register Notice regarding BPA rates or the TRM that prohibits, limits, or restricts «Customer Name»'s right to submit testimony or brief issues on rate matters regarding the meaning or implementation of the TRM or establishment of BPA rates pursuant to it, provided however for purposes of BPA's conformance to this paragraph a "rate matter" shall not include budgetary and program level issues.
- 6.6 The TRM established by BPA as of the Effective Date includes, among other things, the following:

- 6.6.1 Definitions (from Definitions section of the TRM):

Contract High Water Mark (CHWM). The amount used to define each customer's access to Tier 1-priced power, expressed in average megawatts. CHWM is equal to the customer's Eligible Load (as defined in the TRM), proportionately scaled to the firm critical output of Tier 1 System Resources (as defined in the TRM), and adjusted for credited conservation. The CHWM is specified in each eligible customer's CHWM Contract. See section 4.2 (of the TRM).

Rate Period High Water Mark (RHWM). The amount used to define each customer's eligibility to purchase power at a Tier 1 price for the relevant Rate Period (as defined in the TRM), subject to the customer's Net Requirement, expressed in average megawatts. RHWM is equal to the customer's CHWM as adjusted for changes in Tier 1 System Resources (as defined in the TRM). The RHWM is determined for each eligible customer in the RHWM Process (as defined in the TRM) preceding each rate case. See section 4.3 (of the TRM).

Contract Demand Quantity (CDQ). The historical quantity of demand that is subtracted from the Customer's System Peak (CSP) (as defined in the TRM) as part of the process of determining the customer's Demand Charge Billing Determinant (as defined in the TRM). See section 5.3.2 (of the TRM).

- 6.6.2 Rate Period High Water Mark Calculation (from section 4.3.1 of the TRM):

Expressed as a formula, the RHWM will be calculated by BPA for each customer as follows:

$$RHW{M} = \frac{CHWM}{\sum CHWM} \times T1SR$$

where:

RHW{M} = Rate Period High Water Mark, expressed in average megawatts

CHWM = Contract High Water Mark

$\Sigma CHWM$ = sum of all customers' Contract High Water Marks

T1SR = forecast output of Tier 1 System Resources (as defined in the TRM), averaged for the Rate Period